

1 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
SIMON ARON (SBN 108183)
2 11400 West Olympic Blvd., 9th Floor
Los Angeles, California 90064-1582
3 Telephone: (310) 478-4100
Facsimile: (310) 479-1422

4 Attorneys for Lone Oak Fund, LLC

5
6 **UNITED STATES BANKRUPTCY COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**

8 IN RE

9
10 BENYAM and PAULA R. MULUGETA

11 Debtors.
12
13
14
15
16
17
18
19
20
21
22
23
24

Case No.: 09-51900-ASW

Chapter 11

**SECURED CREDITOR LONE
OAK FUND, LLC'S RESPONSE
TO DEBTOR'S STATUS
REPORT INCLUDING
DECLARATIONS OF DANIEL
WOODARD AND GERALD
DUCOT**

Date: January 8, 2010

Time: 10:30 a.m.

Courtroom: 3020

United States Bankruptcy Court
280 S. First Street, Room 3020
San Jose, CA 95113

Judge: Honorable Arthur Weissbrodt

25 **TO: THE HONORABLE ARTHUR S. WEISSBRODT, UNITED STATES**
26 **BANKRUPTCY JUDGE:**

27 COMES NOW secured creditor Lone Oak Fund, LLC (the "Lone Oak"), and
28 hereby submits its reply to the Status Report submitted by debtors Benyam and Paula

LONE OAK'S RESPONSE TO DEBTORS' STATUS REPORT

FILED
JAN 05 2010
CLERK
United States Bankruptcy Court
San Jose, California

File By Fax

1 R. Mulugeta ("Debtors") regarding the Debtor's Motion to Extend Time on Order Re
2 Motion for Relief From Automatic Stay (the "Motion to Extend") and the Motion to
3 Sell Real Property (the "Motion to Sell") as follows¹:

4 On July 14, 2009, this Court granted Lone Oak relief from the automatic stay
5 effective October 2, 2009. Relief was expressly delayed to allow time for the Debtors
6 to complete a sale of the real property located 2332 Harrison Street, Oakland,
7 California (the "Harrison Property"), which sale had been approved by this Court at a
8 hearing held on July 1, 2009. Lone Oak did not object to the proposed sale at that time.

9 Despite numerous hearings and continuances, and notwithstanding a seemingly
10 never ending stream of optimistic representations and assessments from the Debtors, no
11 sale has moved forward and nothing has changed since September of 2009, except that
12 Lone Oak is in a worse position today than it was back on October 2, 2009, when it
13 should have been allowed to protect its interests in the Harrison Property.

14 Since October 2, 2009, Lone Oak interests have been eroded by the accrual of
15 interest at the rate of approximately \$55,000 per month, or approximately \$165,000 as
16 of January 2, 2010, the accrual of additional real property taxes in the amount of
17 \$43,132.73, and costs and expenses, including attorney's fees of approximately
18 \$12,000.00. At present, delinquent property taxes alone amount to \$155,972.63, and
19 the total debt owed to Lone Oak is approximately \$4,379,321.81 as of December 31,
20 2009.²

21 The Debtor's Status Report suggests that: (1) A sale is still pending to Trading
22 Spaces; (2) They have "contacted two commercial real estate firms, Coldwell Bank
23 Commercial and The Elmer Group of Marcus & Millichap to list Harrison at or below
24

25 ¹ The Status Report filed by Debtors appears to be missing pages. On or about
26 December 28, 2009, Debtors served by mail a copy of an unfiled 4-page document
entitled Status Report, a true and correct copy of which is attached hereto as Exhibit "A".

27 ² This figure is net of the amounts paid by the Debtors pursuant to this Court's
28 Order entered on November 12, 2009.

1 \$6 million in order to prompt a quick sale"; and (3) "Debtors will open the hotel for
2 business starting January 4, 2010. There will be 60 rooms available; room rent will be
3 \$39.99 per night." Status Report, p. 1-2. These are virtually identical statements made
4 by the Debtors' in their prior filings to this Court on October 9 and again on October
5 20, 2009.³

6 1. Sale of Harrison. As the Court will recall, the Debtor's have had this
7 property in escrow since February of 2009. First with Trading Spaces, which was to
8 close on August 15, 2009. The Debtor terminated that purchase because Trading
9 Spaces failed to perform at or immediately prior to the hearing before this Court on
10 October 22, 2009. Then the Debtor's sought to sell the Harrison to another purported
11 buyer, R K Relan ("Relan"), which has also not closed. There is no basis to believe
12 that any sale of the Harrison will be forthcoming. This conclusion is not only supported
13 by the six months of time this Court has given the Debtors to do so, but by the results
14 of Lone Oak's recent inspection of the property, as described below.

15 2. Employment of Real Estate Brokers. The Debtor's statement is
16 nothing more than repetition of an identical statement made by them in October of
17 2009. See, Exhibit "C" hereto, p. 3, ll. 5-8, inclusive.

18 3. Rental of the Harrison. The Debtors have repeatedly represented to
19 this Court that the Harrison was ready to be rented and would start generating income,
20 from which Lone Oak would be paid on a monthly basis. However, the statements
21 made then and now are patently false. The Debtors have no certificate of occupancy,
22 and none will be forthcoming in light of the 360 or so health and safety code violations
23 disclosed in a recent (December 21, 2009) inspection conducted by Daniel Woodward
24 of Woodward Construction, at the request of Lone Oak. These violations included,
25 bare, exposed electric wires and missing electrical cover plates, out of date fire
26

27 ³ True and correct copies of these filings are attached hereto as Exhibits "B" and
28 "C".

1 extinguishers, removed fire alarms, falling or dropped ceilings, holes in walls, open
2 interior walls and ceilings with exposed framing, missing and loose Spanish roof tiles,
3 and pigeon droppings and pigeon remains inside creating an unbearable stench and
4 health risks.⁴

5 In conclusion, there is no basis to further delay Lone Oak from exercising its
6 rights and remedies against the Harrison. For the reasons set forth above, and in its
7 numerous prior oppositions, Lone Oak respectfully requests that the Court deny the
8 Motion to Extend and the Motion to Sell in their entirety.

9
10 DATED: January 4, 2010

WOLF, RIFKIN, SHAPIRO, SCHULMAN
& RABKIN, LLP

11
12
13 By: 

SIMON ARON

Attorneys for Lone Oak Fund, LLC

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 ⁴ Attached hereto as Exhibit "D" are true and correct copies of some of the
pictures depicting the condition of the Harrison Property.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

17
18
19
20
21
22
23
24
25
26
27
28

- 22
23
24
25
26
27
28

1 g. pigeon droppings and pigeon remains inside creating an unbearable stench
2 and health risks

3 h. stored flammable and combustible materials

4 5. During my physical inspection, I took numerous pictures depicting
5 some of the violations I observed at the Subject Property. Attached hereto collectively as
6 Exhibit "D" are true and correct copies of the pictures I took during my inspection of the
7 Subject Property.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct, this Declaration is executed on January 4, 2010, at Los Angeles,
10 California.

11 
12 DANIEL WOODWARD

- 1 f. missing and loose Spanish roof tiles
2 g. pigeon droppings and pigeon remains inside creating an unbearable stench
3 and health risks
4 h. stored flammable and combustible materials

5 5. During my physical inspection, I took numerous pictures depicting
6 some of the violations I observed at the Subject Property. Attached hereto collectively
7 as Exhibit "D" are true and correct copies of the pictures I took during my inspection
8 of the Subject Property.

9 I declare under penalty of perjury under the laws of the State of California that
10 the foregoing is true and correct, this Declaration is executed on January 4, 2010, at
11 Los Angeles, California.

12 DANIEL WOODWARD
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 by visitors or tenants.

2 7. On or about October 23, 2006, Lone Oak loaned Debtors \$3,500,000.00.
3 The loan is evidenced by a Note dated October 23, 2006 (the "Note"). The Note
4 provided for payments by Debtors to Plaintiff of \$28,875.00 per month on the first day
5 of each month commencing on December 1, 2006, with the balance due and payable on
6 April 30, 2008.

7 8. The loan is secured by a Deed of Trust in a first position against the
8 Subject Property (the "Deed of Trust"). The Deed of Trust was recorded on October
9 27, 2006, as instrument number 2006402481 in the Alameda County Recorder's Office.

10 9. On or about March 31, 2008, Lone Oak and Debtors entered into a Loan
11 Modification Agreement, whereby the term of the Note and Deed of Trust was
12 extended from April 30, 2008, to and including October 31, 2008.

13 10. On October 31, 2008, Debtors defaulted under the terms of the Note and
14 Deed of Trust in that Debtors failed to pay the balance of principal and interest
15 remaining unpaid on the Loan. The Debtors further defaulted under the terms of the
16 Note and Deed of Trust by abandoning the Subject Property and by failing to pay real
17 property taxes coming due on the Subject Property, taxes which became delinquent first
18 on April 10, 2008.

19 13. Specifically, Debtors failed to pay the second installment of taxes for the
20 2007-2008 years, and \$39,417.98 remains due and owing. In addition, as May 1,
21 2009, taxes are owed to the Alameda County Tax Collector in connection with the
22 Subject Property for the 2008-2009 years in the aggregate amount of approximately
23 \$73,411.94. More recently, Debtors failed to pay the taxes coming due without penalty
24 on December 10, 2009, and, as a result thereof, an additional \$43,132.73 has accrued
25 against the Subject Property ahead of Lone Oak's deed of trust. Therefore, as of
26 January 2, 2010, there is approximately \$155,000 is owed for outstanding taxes secured
27 by the Subject Property ahead of Lone Oak's deed of trust.

28

LONE OAK'S RESPONSE TO DEBTORS' STATUS REPORT

1 14. In addition, from and after June 10, 2008, interest began to accrue on the
2 amount of \$39,417.98 owed to the Alameda County Tax Collector for 2007-2008 taxes
3 at the rate of one and one-half (1½ %) percent per month, or eighteen (18%) per
4 annum. Similarly, from and after June 10, 2009, interest will begin to accrue on the
5 amount of \$73,411.94 owed to the Alameda County Tax Collector for 2008-2009 taxes
6 at the rate of one and one-half (1½ %) percent per month, or eighteen (18%) per
7 annum.

8 15. As of January 2, 2010, amounts owed to Lone Oak under the Note and
9 Deed of Trust are as follows:

Principal	\$3,500,000.00
Interest through maturity	\$ 93,625.00
Interest after maturity	\$ 700,833.38
Late Fees through maturity	\$ 9,362.50
Foreclosure Costs	\$ 38,680.60
Legal Fees and Costs	<u>\$ 36,820.33⁵</u>
Total	\$ 4,379,321.81

16 This amounts takes into account all amounts recently paid to Lone Oak by or on behalf
17 of the Debtors.

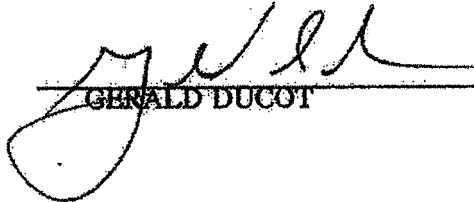
18 16. Finally, I am advised that the Debtors contend that Lone Oak has
19 somehow interfered with their purported sales of the Subject Property. All such
20 statements and inferences are simply untrue. In or around September, 2009, I received
21 a telephone call from a broker purporting to represent the Debtors and a purported,
22 potential lessee. They claimed to be meeting with the Debtors and asked two questions:
23 First, they asked whether Lone Oak would agree to continue to provide financing if the
24 potential lessee signed a lease? I replied that Lone Oak would under certain conditions
25 including having Lone Oak's loan brought current; Secondly, they asked if Lone Oak
26

27 _____
28 ⁵ Estimated through the date of the hearing on Lone Oak's Motion.

1 would provide financing to them if they purchased the property? I replied that Lone
2 Oak would do so subject to acceptable terms. Terms were not discussed. Other than as
3 stated herein, neither I, nor anyone else employed by Lone Oak has had any
4 conversations with any person concerning the sale or lease of the Harrison Property.

5 17. On December 25, 2009, I received an email and attached letter from
6 Debtor Benyam Mulugeta, a true and correct copy of which is attached hereto as
7 Exhibit "E".
8

9 I declare under penalty of perjury under the laws of the State of California that
10 the foregoing is true and correct. Executed on January 2, 2010, at Los Angeles,
11 California,
12

13 
14 _____
15 GERALD DUCOT
16
17
18
19
20
21
22
23
24
25
26
27
28

LONE OAK'S RESPONSE TO DEBTORS' STATUS REPORT